

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

4 UNITED STATES OF AMERICA, )  
4 )  
5 Plaintiff, ) CASE NO.: 4:13-CR-00319-DW-03  
5 )  
6 v. ) JUNE 30, 2015  
6 ) KANSAS CITY, MISSOURI  
6 MICHAEL SMITH, ) CRIMINAL  
6 )  
7 Defendant. )

## TRANSCRIPT OF PROCEEDINGS

## SENTENCING

BEFORE THE HONORABLE DEAN WHIPPLE  
UNITED STATES SENIOR DISTRICT JUDGE

## APPEARANCES

15 For Plaintiff: Ms. Kathleen D. Mahoney  
United States Attorney's Office  
400 East Ninth Street  
16 Kansas City, Missouri 64106

17 For Defendant: Ms. Lisa Nouri  
2526 Holmes  
18 Kansas City, Missouri 64108

19 For Probation and Pretrial: Mr. Johnathan M. Smith

20 Proceedings recorded by machine shorthand recording,  
transcript produced by computer-aided transcription.

22 Sandra D. Lamken, CCR, RPR  
United States District Court Reporter  
23 Charles Evans Whittaker Courthouse  
400 East Ninth Street  
Kansas City, Missouri 64106  
24 816-512-5622

1 JUNE 30, 2015

2 (The following hearing was held in open court  
11:06:00 3 beginning at 11:05 a.m., counsel and defendant present:)

11:06:00 4 THE COURT: Good morning. Please be seated.

11:06:04 5 MS. MAHONEY: Good morning.

11:06:05 6 MS. NOURI: Good morning, Your Honor.

11:06:06 7 THE COURT: Are we ready on Mr. Smith's case?

11:06:10 8 MS. NOURI: We are, Your Honor.

11:06:11 9 THE COURT: All right. Mr. Smith, would you come up  
11:06:13 10 to the podium with your attorney while I call this case for  
11:06:16 11 hearing?

11:06:16 12 (So done.)

11:06:17 13 THE COURT: The Court will call Case Number  
11:06:21 14 13-00319-03, *United States of America vs. Michael Smith.*

11:06:26 15 Are you Michael Smith?

11:06:28 16 THE DEFENDANT: Yes, Your Honor.

11:06:28 17 THE COURT: And you're represented by Ms. Lisa  
11:06:31 18 Nouri; is that correct?

11:06:32 19 THE DEFENDANT: Yes.

11:06:33 20 THE COURT: Mr. Smith, you appeared in front of me  
11:06:35 21 last November, on November the 3rd, 2014, and pled guilty to  
11:06:41 22 Count One of a multi-count, multi-defendant charge. You pled  
11:06:48 23 guilty to Conspiracy to Commit Use of Fire in a Federal Crime,  
11:06:53 24 Arson, Mail Fraud, and Wire Fraud.

11:06:56 25 I questioned you under oath concerning that offense,

11:06:59 1 accepted your plea of guilty, and ordered a presentence  
11:07:03 2 investigation to assist us in determining what would be an  
11:07:06 3 appropriate sentence.

11:07:07 4 Now that presentence report is done and you should  
11:07:10 5 have received a copy of it. Did you?

11:07:12 6 THE DEFENDANT: Yes, sir.

11:07:13 7 THE COURT: Have you had it for at least  
11:07:15 8 fourteen days?

11:07:16 9 THE DEFENDANT: Yes, Your Honor.

11:07:18 10 THE COURT: Now I need to ask your attorney,  
11:07:19 11 Ms. Nouri, do you know of any additions or corrections we need  
11:07:22 12 to address?

11:07:24 13 MS. NOURI: No, Your Honor.

11:07:25 14 THE COURT: All right. Now, Mr. Smith, at the time  
11:07:32 15 I took your plea of guilty I discussed with you the fact that  
11:07:36 16 we use these Federal Sentencing Guidelines to determine an  
11:07:39 17 appropriate sentence. That was also done in this presentence  
11:07:44 18 report.

11:07:44 19 In this presentence report it shows a total offense  
11:07:48 20 level of twenty-one points. It shows you have a criminal  
11:07:52 21 history category of one. The Guidelines suggest a sentencing  
11:07:56 22 range of thirty-seven to forty-six months. Any period of  
11:08:00 23 incarceration to be followed by one to three years' supervised  
11:08:04 24 release. The fine range is \$7,500 to \$75,000, and the  
11:08:10 25 restitution is indicated in the amount of \$50,764.51. There

11:08:25 1 must be a one-hundred-dollar special assessment.

11:08:27 2 That appears to be the applicable guidelines. Is  
11:08:32 3 there any objections to the calculations by the government?

11:08:34 4 MS. MAHONEY: No, Your Honor.

11:08:35 5 THE COURT: Ms. Mahoney, I was trying to look as I  
11:08:39 6 was reading that, there's no forfeiture, preliminary  
11:08:43 7 forfeiture judgment, for this defendant?

11:08:46 8 MS. MAHONEY: There should have been.

11:08:48 9 THE COURT: I'm looking here.

11:08:50 10 MS. NOURI: There was.

11:08:50 11 MS. MAHONEY: I believe there was, Your Honor.

11:08:53 12 THE COURT: All right. Here's restitution and that  
11:09:00 13 50,000.

11:09:00 14 MS. MAHONEY: Your Honor, I believe we filed a joint  
11:09:04 15 preliminary order -- or a preliminary motion for all the  
11:09:08 16 defendants.

11:09:09 17 THE COURT: For the same amount?

11:09:11 18 MS. MAHONEY: Yes, Your Honor, for the money  
11:09:14 19 judgment.

11:09:15 20 THE COURT: All right.

11:09:16 21 MS. MAHONEY: Yes. And Ms. Nouri has a copy.

11:09:18 22 THE COURT: Could it be in that plea agreement?

11:09:21 23 MS. NOURI: No, Your Honor.

11:09:21 24 THE COURT: I don't have it anywhere in my files.  
11:09:25 25 Give me an amount, please.

11:09:27 1 MS. MAHONEY: I'm sorry. Yes, Your Honor.

11:09:30 2 THE COURT: Wait. Did I enter a preliminary order

11:09:34 3 of forfeiture?

11:10:00 4 It shows a forfeiture by way -- this is moving for

11:10:25 5 an order forfeiting the following property, and it lists the

11:10:30 6 six properties. Well, it lists more than that. It lists

11:10:40 7 eight properties.

11:10:42 8 Why is there eight properties and as well as a money

11:10:47 9 judgment in the amount of \$434,938?

11:10:55 10 The defendant also specifically agreed to the

11:11:01 11 forfeiture allegation. Do you remember that?

11:11:07 12 THE DEFENDANT: Yes, Your Honor.

11:11:08 13 THE COURT: Just barely, right?

11:11:11 14 THE DEFENDANT: Yeah.

11:11:11 15 MS. MAHONEY: Your Honor, I would agree to limit it

11:11:13 16 to the amount that has been found should be due in restitution

11:11:16 17 for this defendant, which is \$50,764.37 for the order of

11:11:27 18 forfeiture as well as the restitution.

11:11:28 19 THE COURT: You mean enter the forfeiture in that

11:11:33 20 same amount?

11:11:34 21 MS. MAHONEY: Correct. Just to make things

11:11:37 22 hopefully simpler.

11:11:38 23 MS. NOURI: What was that total number?

11:11:40 24 MS. MAHONEY: It's \$50,764.37, which is the amount

11:11:46 25 for the restitution.

11:11:47 1 MS. NOURI: Thank you.

11:11:48 2 THE COURT: All right. So we'll just show the

11:11:58 3 forfeiture in the same amount as the restitution.

11:12:01 4 All right. Now having made the findings as to the

11:12:07 5 -- I need to make findings as to the Guidelines, and then

11:12:10 6 we'll take up the motion, the government's motion for downward

11:12:13 7 departure.

11:12:13 8 Is there any objections to the calculations of the

11:12:17 9 Guidelines in this case?

11:12:19 10 MS. MAHONEY: No, Your Honor.

11:12:20 11 MS. NOURI: No, Your Honor.

11:12:20 12 THE COURT: Are there any by the defense?

11:12:22 13 MS. NOURI: There are none.

11:12:24 14 THE COURT: Then those are the Guidelines I'm

11:12:26 15 considering, but now let's take up the government's motion for

11:12:32 16 downward departure. Ms. Mahoney?

11:12:33 17 MS. MAHONEY: Yes, Your Honor. I would urge this

11:12:36 18 Court to admit my motion for downward departure and grant the

11:12:43 19 motion. Mr. Smith was the first of these conspirators to

11:12:47 20 admit his involvement.

11:12:50 21 Mr. Stamps is his brother-in-law, and in the

11:12:54 22 government's opinion, and I think this is borne out in the

11:12:56 23 presentence report investigation by probation, Mr. Stamps was

11:13:00 24 not only more culpable, but many multitudes more culpable than

11:13:09 25 any of the codefendants. He engineered this entire scheme.

11:13:12 1 He recruited the codefendants. He led the scheme at every  
11:13:16 2 level. He was the primary person who profited from the  
11:13:19 3 scheme.

11:13:19 4 I do not believe that the rest of the defendants  
11:13:22 5 would have become involved without him, not to say that  
11:13:25 6 they're not responsible for their actions, but just to say  
11:13:27 7 that I think that goes to their future dangerousness.

11:13:30 8 Because Mr. Stamps was Mr. Smith's brother-in-law  
11:13:35 9 when he, both, admitted his conduct and agreed to work  
11:13:39 10 proactively with the police and wear a wire and cooperate,  
11:13:44 11 that took some personal resolve and courage.

11:13:48 12 So for those reasons, Your Honor, I would urge the  
11:13:51 13 Court to grant the motion for downward departure. I would  
11:13:53 14 recommend that Mr. Smith serve a sentence of probation and  
11:13:58 15 then the restitution as laid out in the presentence report.

11:14:02 16 THE COURT: Thank you.

11:14:05 17 Ms. Nouri, what's your position?

11:14:06 18 MS. NOURI: Well, Your Honor, certainly we concur  
11:14:09 19 with that, but I might add that I would predict at the end of  
11:14:14 20 the day, the government had sent some forfeiture paperwork to  
11:14:18 21 all defendants that they always do, not only has my client  
11:14:22 22 filled it out, he has courteously provided the last six years  
11:14:27 23 tax returns to the government, and he's paid his  
11:14:30 24 one-hundred-dollar special assessment before court, Your  
11:14:33 25 Honor.

1                   He's a law-abiding citizen. He had, I would call  
2 it, been hounded or been badgered by Joshua Stamps for several  
3 months to participate in this. He finally succumbed. When he  
4 was confronted by law enforcement, I believe he gave three  
5 proffers. He wore a wire over several weeks or months.

6                   He's very bright with numbers, which is evidenced by  
7 his whole adult work career in the trucking industry, but I  
8 would call him naive, gullible, and immature in a lot of ways.  
9 He's easily influenced and, I would suspect, taken advantage  
10 of.

11                  I'm not minimizing his culpability, but I'm telling  
12 you this guy will never reoffend, and I probably can only say  
13 that two or three times in my career. I know this guy will  
14 never commit another crime, but he's embarrassed. He feels  
15 bad. He's got depression issues. He has a lack of affect all  
16 the time when I'm with him, and this case has just made his  
17 depression, I think, that much more prevalent and apparent.  
18 But he's ready to get it behind him and move on, and he will  
19 do whatever it is that probation would ask him to do, and he  
20 will just continue working, and, you know, he will listen to  
21 what his probation officer says.

22                  He lives with his mom, who is present, and we're not  
23 going to have any problem with him and I don't think he'll  
24 ever be so taken advantage of or easily influenced like that  
25 ever again. This has cost him his pride that he didn't commit

11:16:13 1 crimes and now he's a felon.

11:16:16 2 THE COURT: All right. Mr. Smith, do you have any  
11:16:19 3 statement to make before I pronounce a sentence on you?

11:16:22 4 THE DEFENDANT: Honestly, just, this was never a  
11:16:26 5 place where I thought I would be in my life right now, and I  
11:16:30 6 never thought I would be one to have a felon on my record or  
11:16:34 7 felony on my record. And I've always done everything that I  
11:16:38 8 can to provide for myself and to attain all that I could, to  
11:16:42 9 do all for myself that I can and to be at a better place, to  
11:16:46 10 make my family proud and friends proud. But I never thought I  
11:16:50 11 would be here. I definitely will never do anything like this  
11:16:53 12 again, and I can honestly say that this was definitely one of  
11:17:00 13 the worst mistakes of my life, so ...

11:17:03 14 THE COURT: All right. Thank you, Mr. Smith.

11:17:05 15 Mr. Smith, I'm going to follow the government's  
11:17:08 16 recommendation, and I'm going to place you on probation for a  
11:17:10 17 period of three years under the supervision of the U.S.  
11:17:14 18 Probation and Parole Office.

11:17:15 19 I'm going to find you do not have the ability to pay  
11:17:21 20 a fine or any cost of incarceration now or in the future.

11:17:27 21 I will be entering the restitution judgment and  
11:17:30 22 forfeiture judgment as -- now, is that really two different  
11:17:36 23 amounts or the same amount?

11:17:37 24 MS. MAHONEY: It's the same amount. It is just via  
11:17:41 25 two different forms.

11:17:42 1 THE COURT: Oh. So does he owe \$101,480 -- how much  
11:17:48 2 does he owe?

11:17:48 3 MS. MAHONEY: Your Honor, I'm requesting only the  
11:17:51 4 50,764.37 for his portion.

11:17:56 5 THE COURT: I will enter a judgment of restitution  
11:17:58 6 and forfeiture combined, for a total amount of \$50,764.54; is  
11:18:05 7 that correct?

11:18:05 8 MS. MAHONEY: I think it's 37 cents.

11:18:07 9 THE COURT: Pardon me?

11:18:07 10 MS. NOURI: Thirty-seven.

11:18:09 11 MS. MAHONEY: Thirty-seven.

11:18:09 12 MS. NOURI: Point three-seven, Your Honor.

11:18:12 13 THE COURT: Well, that is. I wrote it down wrong.  
11:18:15 14 I wonder where I got that.

11:18:19 15 Mr. Smith, having advised you of the punishment I'm  
11:18:24 16 going to assess against you, do you have any reason why this  
11:18:29 17 judgment and sentence should not be formally pronounced upon  
11:18:31 18 you at this time?

11:18:32 19 THE DEFENDANT: No, Your Honor.

11:18:32 20 THE COURT: Allocution is granted to the defendant.

11:18:35 21 It is the judgment and sentence of this Court that  
11:18:38 22 defendant Michael Smith shall be placed -- stay imposing any  
11:18:46 23 sentence and place the defendant on probation for a period of  
11:18:48 24 three years under the supervision of the U.S. Probation and  
11:18:52 25 Parole Office.

11:18:52 1 The Court finds the defendant does not have the  
11:18:56 2 ability to pay a fine or any cost of incarceration. Those  
11:19:00 3 items will be waived.

11:19:00 4 The Court enters judgment against the defendant in  
11:19:03 5 the amount of one-hundred dollars, a special assessment  
11:19:05 6 judgment, which is a final judgment due and payable today.

11:19:08 7 The Court enters a restitution and forfeiture  
11:19:13 8 judgment of \$50,764.37, that being a total amount owed for  
11:19:23 9 restitution and for forfeiture.

11:19:26 10 Now, Mr. Smith, I'm placing you on probation for  
11:19:29 11 three years. You shall conform your conduct to the standard  
11:19:32 12 rules that are in place at the time -- well, now, because  
11:19:37 13 you're being placed on them now. In addition to those  
11:19:41 14 standard conditions, I'm going to impose some special  
11:19:45 15 conditions:

11:19:45 16 Number one, you shall submit your person, any  
11:19:48 17 property, house, residence, office, vehicle, papers, computer,  
11:19:52 18 or other electronic communication or data-storage devices to  
11:19:56 19 be searched by a U.S. probation officer at a reasonable time  
11:19:59 20 and in a reasonable manner, based upon reasonable suspicion of  
11:20:05 21 contraband or evidence of a violation of condition of release.  
11:20:09 22 Failure to submit to a search may be grounds for revocation of  
11:20:12 23 your supervised release, and you shall warn all other  
11:20:14 24 residents that the premises you occupy may be subject to  
11:20:17 25 search pursuant to this condition.

11:20:19 1 Number two, you shall pay any restitution balance  
11:20:24 2 prior to the final six months of supervision on a schedule to  
11:20:27 3 be set by your probation officer.

11:20:28 4 Number three, you shall provide your probation  
11:20:32 5 officer with access to any requested financial information.

11:20:36 6 And, number four, you shall not incur new credit  
11:20:40 7 charges or open additional lines of credit without the  
11:20:45 8 approval of the probation office.

11:20:46 9 This is the judgment and sentence of the Court,  
11:20:50 10 considering the Sentencing Reform Act of 1984, considering the  
11 Guidelines as advisory, considering the factors under 18,  
11:21:01 12 U.S.C., 3553, and, in particular, the nature and circumstances  
11:21:03 13 of this offense and the history and the characteristics of  
11:21:07 14 this defendant, to reflect the seriousness of the offense, to  
11:21:11 15 promote respect for the law, and to provide just punishment  
11:21:14 16 for the offense.

11:21:15 17 Now I need to advise you -- well, did you do any  
11:21:27 18 time in jail?

11:21:28 19 THE DEFENDANT: No, Your Honor.

11:21:29 20 THE COURT: I need to advise you, you have  
11:21:30 21 fourteen days from today to appeal this sentence or any ruling  
11:21:33 22 I have made in imposing this judgment and sentence upon you.

11:21:37 23 Do you understand that?

11:21:37 24 THE DEFENDANT: Yes, Your Honor.

11:21:38 25 THE COURT: You're represented by Ms. Nouri. Are

11:21:41 1 you satisfied with her acting as your attorney in this case?

11:21:43 2 THE DEFENDANT: Yes, Your Honor.

11:21:44 3 THE COURT: Has she done for you everything you've  
11:21:47 4 asked her to do in regards to representing you in this case?

11:21:49 5 THE DEFENDANT: Yes, Your Honor.

11:21:50 6 THE COURT: Has she failed to do for you anything  
11:21:51 7 you've asked her to do in acting as your attorney in this  
11:21:54 8 case?

11:21:54 9 THE DEFENDANT: No, Your Honor.

11:21:55 10 THE COURT: Anything further on behalf of the  
11:21:57 11 government?

11:21:57 12 MS. MAHONEY: Yes, Your Honor. I move to dismiss  
11:22:01 13 Counts Fourteen and Sixteen pursuant to the plea agreement.

11:22:04 14 THE COURT: What did you say?

11:22:05 15 MS. MAHONEY: Counts Fourteen and Sixteen, I move to  
11:22:09 16 dismiss.

11:22:09 17 THE COURT: Oh, I thought you said through. The  
11:22:12 18 Court orders dismissed Counts Fourteen and Sixteen.

11:22:16 19 Probation, have I covered everything?

11:22:18 20 MR. SMITH: I think so, Your Honor, just the joint  
11:22:21 21 and several language for restitution.

11:22:23 22 THE COURT: Restitution shall be joint and severally  
11:22:25 23 with all the codefendants.

11:22:28 24 MR. SMITH: I have codefendant Joshua Stamps and Mr.  
11:22:28 25 Esquivel.

11:22:34 1 THE COURT: What?

11:22:34 2 MS. NOURI: Stamps and Esquivel, Your Honor.

11:22:36 3 THE COURT: Just the two?

11:22:37 4 MS. NOURI: Yes.

11:22:37 5 MR. SMITH: Yes.

11:22:37 6 THE COURT: Joint and severally with Defendant

11:22:41 7 Stamps and Esquivel. All right.

11:22:44 8 Mr. Smith, has anything gone on you don't

11:22:47 9 understand?

11:22:48 10 THE DEFENDANT: No, Your Honor.

11:22:49 11 THE COURT: I'm sitting up here trying to determine

11:22:53 12 if I need to -- Mr. Smith, I'm not sure there are any of the

11:23:01 13 other defendants that are going to get probation.

11:23:05 14 MS. MAHONEY: Your Honor, I am recommending

11:23:07 15 probation for also Mr. Richard and Randy Stamps, so ...

11:23:13 16 THE COURT: Oh, okay. All right.

11:23:14 17 MS. MAHONEY: Of course, it's up to the Court.

11:23:16 18 THE COURT: Well, I was going to suggest --

11:23:18 19 MS. NOURI: May I withdraw Document 159, Your Honor?

11:23:22 20 THE COURT: Yes, if we can find it. Is that this

11:23:26 21 order?

11:23:26 22 MS. NOURI: Yes.

11:23:27 23 THE COURT: I thought Ms. Mahoney supplied that.

11:23:30 24 MS. NOURI: Thank you.

11:23:31 25 THE COURT: All right. Anything further by anyone?

11:23:36 1 MS. MAHONEY: No, thank you, Your Honor.

11:23:37 2 THE COURT: The only thing I was getting ready to

11:23:40 3 say, Mr. Smith, I don't know where you live or if you have any

11:23:45 4 contact with the family of other defendants in this case, but

11:23:49 5 you might be a little careful about discussing with other

11:23:54 6 individuals about -- related to getting probation out of this

11:24:00 7 case, because it doesn't happen very often and it might not be

11:24:04 8 well received.

11:24:05 9 THE DEFENDANT: Yes, Your Honor.

11:24:06 10 THE COURT: And I think your attorney can tell you

11:24:08 11 about that. All right?

11:24:09 12 THE DEFENDANT: Thank you, Your Honor.

11:24:10 13 THE COURT: Probation, do you need to see him before

11:24:12 14 he leaves?

11:24:13 15 MR. SMITH: We'll take care of it.

11:24:15 16 THE COURT: All right. Thank you. Good luck to

11:24:17 17 you, Mr. Smith.

11:24:18 18 MS. NOURI: Thank you.

19 *(The hearing concluded at 11:24 a.m.)*

20 \* \* \* \* \*

21

22

23

24

25

1

## CERTIFICATE

2

I, Sandra D. Lamken, Registered Professional Reporter,  
duly appointed, qualified, and official court reporter for the  
United States District Court, Western District of Missouri, do  
hereby certify that the foregoing is a correct transcript from  
the stenographically reported proceedings in the  
above-entitled matter. The proceedings were reported in  
mechanical and computer stenography and transcribed by  
computer.

3

4

5

/S/Sandra D. Lamken

Sandra D. Lamken, RPR

Federal Official Court Reporter

6

7

Date: May 16, 2016

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25